APPENDIX.

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED JULY 31, 1967.

Before: PHILLIPS and PECK, Circuit Judges, and CECIL, Senior Circuit Judge.

CECIL, Senior Circuit Judge. Ronald Carabbia, defendant-appellant, was convicted in the United States District Court for the Northern District of Ohio, Eastern Division, on a charge of filing a false United States Treasury Department form. The indictment upon which he was convicted reads as follows:

"The Grand Jury charges:

"That on or about the 30th day of June, 1962, at Youngstown, Ohio, in the Northern District of Ohio, Eastern Division, RONALD CARABBIA, unlawfully, willfully and knowingly, made and subscribed a United States Treasury Department Form 11-C Special Tax Return and Application for Registry-Wagering, for the period July 1, 1962 to June 30, 1963 which was verified by a written declaration that it was made under the penalties of perjury, which said Form 11-C Special Tax Return and Application for Registry-Wagering he did not believe to be true and correct as to every material matter in that the said Form 11-C Special Tax Return and Application for Registry-Wagering stated that the defendant, RONALD CARABBIA, had two employees and/or agents receiving wagers in his behalf, whereas, as he then and there well knew and believed he had a greater number of employees and/or agents receiving wagers in his behalf.

"In violation of Title 26, Section 7206(1), United States Code."

The defendant-appellant was tried before a jury, found guilty and sentenced to three years' imprisonment and to pay a fine of $5000. The defendant-appellant, hereinafter referred to as defendant, then appealed.

Pending this appeal counsel for the defendant filed a motion.

> "* * * for an order requiring the United States Department of Justice to examine its files in connection with the investigation and prosecution of the above case to determine whether the defendant-appellant has been subject to electronic surveillance or wire tapping by either representatives of the United States Department of Justice or the Intelligence Division of the Internal Revenue Service or any other agency of the United States Government, and report to the Court, under oath, whether there has been any such invasion of privacy in violation of the Constitution of the United States."

Counsel for the government admitted

> "* * * that a microphone had been placed in business premises apparently under the control of defendant and his brother. The microphone was in operation from January 22, 1962, until March 22, 1962. The conversations overheard were monitored by agents of the Federal Bureau of Investigation. Logs were kept in which appear summaries of the conversations overheard."

We remanded the case to the District Court with instructions to conduct a prompt and full hearing upon all aspects of the government's use of electronic equipment and to make findings of fact and report to this Court. (See copy of order hereto attached as Appendix A.) The district judge conducted a hearing and reported to this Court its findings of facts and conclusions of law. The district judge concluded that electronic surveillance of the defendant was not used in any way in the trial of this case. We have examined a transcript of the testimony at the hearing before the district judge and confirm his findings of facts and conclusions of law. (Copy of the findings of facts and con-

clusions of law is attached hereto as Appendix B.) The case having been submitted to the Court on briefs and oral arguments of counsel, we proceed to decide the appeal on its merits.

We consider first the claim that the indictment does not state an offense. The indictment of the Grand Jury is based on Section 7206(1),[1] Title 26, U.S.C. Section 4412 (a)(1), (2), Title 26, U.S.C. provides for registration in connection with the imposition of a tax on wagers under Sections 4401 and 4411, Title 26, U.S.C., and reads as follows:

> "(a) Each person required to pay a special tax under this subchapter shall register with the official in charge of the internal revenue district—
>
> "(1) his name and place of residence;
>
> "(2) if he is liable for tax under subchapter A, each place of business where the activity which makes him so liable is carried on, and the name and place of residence of each person who is engaged in receiving wagers for him or on his behalf."

Treasury regulations Sections 44.6071.1 and 44.4412-1 were promulgated by the Commissioner to implement the statute on registration. Regulation 44.6071.1(b) provides that initially when one desires to enter into the business of accepting wagers he must file a Form 11-C beginning with the first day of the calendar month in which he expects to engage in such business and ending with the following June 30th.

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[1] "Any person who—

"(1) Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter * * * shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than 3 years, or both, together with the costs of prosecution."

"Thereafter, each return required to be made on Form 11-C shall be filed on or before July 1 to cover a 1-year period (beginning July 1 and ending June 30 of the following calendar year) during which taxable activity continues."

Regulation 44.4412-1(b)(2) provides:

"Each person engaged in the business of accepting wagers on his own account shall report on Form 11-C the name and address of each place where such business will be conducted and the name, address, and number appearing on the special (occupational) stamp of each agent or employee who may receive wagers on his behalf. Thereafter, a return shall be filed on Form 11-C, marked 'Supplemental', each time an additional employee or agent is engaged to receive wagers. Such supplemental return shall be filed not later than 10 days after the date such additional employee or agent is engaged to receive wagers and shall show the name, address, and number appearing on the special (occupational) stamp of each such agent or employee. As to a change of address, see Section 44.4905-2."

Questions 5(b) and (c) of Form 11-C require the applicant to state the number of persons *engaged* in receiving wagers on his behalf and the name, address and tax stamp number for each such person.

Section 6065, Title 26, U.S.C. provides that any return or declaration required to be made under any provision of the revenue laws "shall contain or be verified by a written declaration that it is made under the penalties of perjury." Section 7206(1) under which this offense is prosecuted makes it an offense to make a false declaration.

The basis of the defendant's claim that the indictment does not state an offense is that he is charged with falsifying as to future events. This is a misinterpretation of the statute, the regulations and the allegations of the indict-

ment. The indictment charges the defendant with a violation in the language of the statute alleged to be violated. See *Hoover v. United States*, 358 F.2d 87 (C.A. 5), cert. den. 385 U.S. 822; *United States v. Chunn*, 347 F.2d 717 (C.A. 4). Form 11-C, which is the subject of the offense charged, is a renewal application to enable the defendant to continue in business for the ensuing governmental fiscal year. The indictment charges that the defendant committed an offense on June 30, 1962, in that he declared in Form 11-C that at that time he had only two employees or agents receiving wagers in his behalf, when he well knew and believed that at that time he had more than two employees receiving wagers on his behalf. Future employees would be reported by filing a supplemental Form 11-C. The government's case would fail unless it proved beyond a reasonable doubt that the defendant had more than two employees receiving wagers on his behalf on June 30, 1962.

We find no merit to the defendant's argument that the meaning of Section 7206(1) and the Regulations is vague. We conclude that the indictment states an offense.

Counsel for the defendant claim that the trial judge erred in not inquiring of the jurors on voir dire examination, upon request, if they had any prejudice by reason of the defendant being engaged in the gambling business.

The conduct of the voir dire examination is discretionary with the trial judge. In *Aldridge v. United States*, 283 U.S. 308, at p. 310, the Court said:

> "In accordance with the existing practice, the questions to the prospective jurors were put by the court, and the court had a broad discretion as to the questions to be asked. The exercise of this discretion, and the restriction upon inquiries at the request of counsel, were subject to the essential demands of fairness."

See also *United States v. Dennis*, 339 U.S. 162, 168, rehearing den. 339 U.S. 950; *Johnson v. United States*, 270 F.2d 721 (C.A. 9), cert. den. 362 U.S. 937; *Stone v. United States*, 324 F.2d 804 (C.A. 5), cert. den. 376 U.S. 938; *United States v. Barra*, 149 F.2d 489 (C.A. 2).

The question before us is whether the trial judge abused his discretion. The judge began his voir dire examination by reading the indictment to the jury. This was sufficient to inform the jurors that the defendant was engaged in the business of receiving wagers. Thereafter he conducted an extensive examination in which he cautioned the jurors against being prejudiced or predisposed to judgment. After explaining fully what was meant by prejudice, the jurors responded to a question that they had no prejudice. The jurors were asked whether they "or any members of their immediate family ever applied for or held a Federal wagering tax stamp." Upon reading the transcript of the voir dire examination, we conclude that the jurors were fully informed as to the nature of the case, that they were fairly examined as to prejudices and predisposition to judgment and that the trial judge did not abuse his discretion in refusing to ask a specific question suggested by counsel.

Another claim made on behalf of the defendant is that the trial judge erred in denying motions for acquittal where the prosecution did not prove perjury by the testimony of two witnesses or the testimony of one witness and corroborating evidence. This question was not specifically raised before the trial court by the motions of counsel for the defendant at the close of the government's evidence and at the close of all of the evidence at the trial. However, we proceed to discuss the question.

The defendant is not charged with perjury as defined by Section 1621, Title 18, U.S.C. The substance of the

offense created by this statute is the swearing falsely under oath taken either orally or subscribed to in writing before a person or tribunal competent to administer an oath in a matter in which a law of the United States authorizes an oath to be administered. Admittedly the two-witness rule is applicable to charges of perjury prosecuted under this statute. *Weiler v. United States,* 323 U.S. 606; *May v. United States,* 280 F.2d 555 (C.A. 6).

No oath is involved in the statute under which the defendant is prosecuted. The gist of the crime with which the defendant is charged is willfully making a declaration in a document under the pains and penalties of perjury which the declarant does not believe to be true as to every material matter. This section of the Code is more nearly analogous to Section 1001, Title 18, U.S.C., than it is to Section 1621. Section 1001 cases do not require the testimony of two witnesses or the testimony of one witness and corroborating evidence. *United States v. Killian,* 246 F.2d 77 (C.A. 7); *Fisher v. United States,* 231 F.2d 99 (C.A. 9). It is only essential that guilt be established beyond a reasonable doubt.

We are of the opinion, however, that the two-witness rule is met even though not required. In considering motions for acquittal or for a directed verdict, the court must view the evidence in the most favorable light to the government. *Glasser v. United States,* 315 U.S. 60, rehearing den. 315 U.S. 827; *United States v. Conti,* 339 F.2d 10 (C.A. 6). The testimony of William Gaul is to the effect that he and the Kosco brothers, Andy and George, were writing numbers for the defendant on June 30, 1962, the critical time in issue. It is claimed that Gaul's testimony is not supported by any other witness or by other independent corroborating evidence. We have examined the trial transcript and conclude that there is sufficient

evidence, when viewed in the most favorable light to the government, from which the jury could infer that Gaul and the Kosco brothers were writing numbers for the defendant at the time he made the application for a wagering stamp in question.

In addition there is the testimony of the defendant himself in which he admits that Gaul turned in wagers to him throughout the period in question.

> "Q. Did Willie Gaul continue to turn in to you after July 1st?
>
> "A. Yes, he gave me what he didn't want after July.
>
> "Q. The same as before July? He would come in there and give you slips and money?
>
> "A. Yes.
>
> "Q. And right up until the end of the time that you went out of the numbers business?
>
> "A. Yes, he told me he was getting his own stamp, and I took it for granted he had a stamp.
>
> "Q. He continued to turn in his numbers to you?
>
> "A. Yes, sir."

When the defendant offered evidence in his own behalf, after the government closed its case, which supplied any evidentiary defect in the government's case, he waived his contention of a failure of proof on the part of the government. *United States v. Goldstein*, 168 F.2d 666 (C.A. 2). The defendant seems to reason that he would have some immunity if Gaul had his own stamp and turned in to him only such numbers as Gaul did not want. We find no support for this theory. Everyone writing numbers whether principal or agent is required to have a stamp. Gaul's stamp listed the defendant as principal. The defendant claimed that he had not authorized this and did not know it. This was a fact for the jury to determine from all of the circumstances in the case.

Another assignment of error is the refusal of the trial judge to give the defendant's requested instruction No. 6 relative to the element of willfulness in a felony case.

The requested instruction reads as follows:

> "Before you can find the defendant guilty, you must be satisfied beyond a reasonable doubt that he acted willfully, that is intentionally, knowingly, and *with an evil mind and bad purpose.*" (Emphasis added.)

The trial judge, in his instructions, defined willfully, as follows:

> "To do an act willfully, as used in the statute, means that the act was committed by the defendant voluntarily, with knowledge that it was prohibited by law, and *with the purpose of violating the law and not by mistake, accident or in good faith.*" (Emphasis added.)

A trial judge is not required to give a requested instruction if the subject matter of the instruction is substantially covered in the judge's general charge. *United States v. Donovan,* 339 F.2d 404 (C.A. 7), cert. den. 380 U.S. 975; *Davis v. United States,* 226 F.2d 331 (C.A. 6), cert. den. 350 U.S. 965, rehearing den. 351 U.S. 915. We consider that a "purpose of violating the law and not * * * in good faith" is substantially the same as "evil mind and bad purpose." A purpose to violate a criminal statute is a bad purpose and one who contemplates doing so intentionally has an evil mind. The trial judge might well have given the instruction as requested but we find that he gave the substance of it in his general charge and that he was not in error in refusing it.

It is assigned as error that the trial judge, by his cross-examination of witnesses, and comments to defendant's counsel in the presence of the jury improperly conveyed

to the jury the impression that the judge was interested in a conviction of the defendant.

Counsel for the defendant refer to three separate and isolated instances where the trial judge made some comment to counsel in passing on objections. We do not consider that these comments reflected the judge's interest in the case or that they were prejudicial to the defendant.

The district judge questioned prosecution witnesses as follows: Andrew Kosco to the extent of ten pages of the transcript, William Gaul, four pages, Leo Ferranti, two pages, and John Relic on rebuttal, one question. In each instance he gave counsel an opportunity to ask additional questions. We said in *Knapp v. Kinsey*, 232 F.2d 458, 466, cert. den. 352 U.S. 892:

> "The trial judge in the federal court is more than a mere arbitrator to rule upon objections and to instruct the jury. It is his function to conduct the trial in an orderly way with a view to eliciting the truth and to attaining justice between the parties. It is his duty to see that the issues are not obscured and that the testimony is not misunderstood. He has the right to interrogate witnesses for this purpose."

See also *Glasser v. United States, supra; United States v. Brandt*, 196 F.2d 653, 655 (C.A. 2).

We do not look with favor on extensive examination of witnesses by the trial judge in a jury trial. We do not find in this case, however, that the judge abused his discretion in this respect or that his questioning of witnesses constitutes prejudicial and reversible error. See *United States v. Lewis*, 338 F.2d 137, cert. den. 380 U.S. 978.

Finally, it is claimed that the defendant acted on the advice of a special agent of the Internal Revenue Service and that the evidence necessary to sustain a conviction was assembled by making use of the fruits of the agent's misdirection. It is contended that the jury should have

been instructed that if they find this to be a fact they should return a verdict of not guilty. We find no evidence to support this claim and conclude that it is without merit.

The judgment of the District Court is affirmed.

"APPENDIX A."

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT REMANDING CASE TO DISTRICT COURT.

Before: PHILLIPS and PECK, Circuit Judges, and CECIL, Senior Circuit Judge.

This cause is before the Court on motion of defendant-appellant, Ronald Carabbia,

> "* * * for an order requiring the United States Department of Justice to examine its files in connection with the investigation and prosecution of the above case to determine whether the defendant-appellant has been subject to electronic surveillance or wire tapping by either representatives of the United States Department of Justice or the Intelligence Division of the Internal Revenue Service or any other agency of the United States Government, and report to the Court, under oath, whether there has been any such invasion of privacy in violation of the Constitution of the United States."

on Memorandum of the Assistant Attorney General stating facts as follows:

> "* * * that a microphone had been placed in business premises apparently under the control of defendant and his brother. The microphone was in operation from January 22, 1962 until March 22, 1962. The conversations overheard were monitored by agents of the Federal Bureau of Investigation. Logs

were kept in which appear summaries of the conversations overheard."

and on memorandums of the parties with respect to the dismissal of defendant-appellant's motion and the disposition of the disclosure of electronic eavesdropping by the government.

Upon consideration of the motion of the defendant-appellant, the memorandum of disclosure by the government and the memorandums of the parties with respect thereto.

It is hereby ordered that the case be remanded to the District Court with instructions to conduct a prompt and full hearing upon all aspects of the government's use of electronic equipment in the premises of the defendant-appellant and determine its effect upon the trial and conviction of the defendant-appellant and whether or not a new trial should be granted or the indictment dismissed.

It is further ordered that the district judge make a finding of fact and report to this Court which will retain jurisdiction of the Appeal.

Entered by order of the Court.

Clerk.

APPENDIX "B."

FINDINGS OF FACT AND CONCLUSIONS OF LAW OF DISTRICT COURT RE GOVERNMENT'S USE OF ELECTRONIC EQUIPMENT.

(Filed May 29, 1967.)

Pursuant to an order entered by the Sixth Circuit Court of Appeals on February 23, 1967, this Court ordered that a hearing be commenced on April 5, 1967, to investigate all aspects of the Government's use of electronic lis-

tening equipment in the premises of the defendant-appellant. Prior to the commencement of this hearing, namely on March 24, 1967, the Government presented to the Court the original and one copy of certain logs which it represented to be the complete and only original records of what was overheard by the electronic surveillance which was disclosed by the Government to the Sixth Circuit Court of Appeals.[1] On the instruction of the Court, an Assistant United States Attorney delivered a copy of these logs to defense counsel on March 29, 1967, under a protective order which permitted the disclosure of the contents thereof by defense counsel only to the extent that they in good faith believed it necessary in order to prepare for the April 5, 1967, hearing. Defense counsel, evidently believing the protective order to be too restrictive, refused to accept the logs at that time.[2] On April 5, 1967, the Court, in order to expedite the hearing, revoked the protective order and, once again, had a copy of the logs delivered to defense counsel.

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[1] The logs were presented to the Court pursuant to a request made at an informal pretrial conference held on March 24, 1967. Counsel for the defendant states that the Court "refused" to rule on certain discovery requests made at that conference. It should be pointed out, however, that the Court did not "refuse" to rule on counsel's requests; rather, there was general agreement that a ruling on the discovery requests might best be deferred until counsel for the defendant had an opportunity to review the logs.

[2] The Court is of the opinion that defense counsel acted unreasonably and arbitrarily in refusing to accept the logs. Even assuming that there was reason to believe that the protective order was unduly restrictive—a position which appears to be entirely without merit—the soundest course of action would have been to accept the logs, study them carefully, and thereafter seek a modification of the protective order in the event counsel thought it necessary. The Court, since it had not reviewed the logs before turning them over, obviously had no way of knowing what they contained by way of relevant information. When counsel argues, as he did in this case, that the order might restrict even his perusal of the logs, he argues outside the realm of reason.

On the basis of the evidence introduced at the hearing conducted from April 5, 1967, to April 10, 1967, the Court makes the following findings of fact.

1. The listening device involved in the electronic surveillance of the defendant was a battery powered microphone installed on January 22, 1962, at the Modern News Center, 620 Youngstown-Poland Road, Struthers, Ohio, and connected by means of commercial telephone lines to the Youngstown, Ohio office of the Federal Bureau of Investigation (hereafter FBI). Several days after its installation, when the connection with the commercial telephone lines had been completed, the device was monitored on a spot check basis. Commencing January 31, 1962, logs were kept of the monitoring of the conversations overheard by means of the device. Logs were kept until March 19, 1962, and the device was discontinued on March 22, 1962.

2. The procedure employed by the FBI in monitoring the aforesaid device was substantially as follows: Agents of the FBI were assigned to the FBI's Youngstown Office to listen through earphones to the sounds which were emanating from the Struthers, Ohio address. They were directed to make entries in their logs of the discernible and intelligible conversations overheard during the monitoring period. The device was monitored at random times when personnel were available. The log entries would consist, as far as possible, of a verbatim transcription of that which was overheard. These logs were and are the only records of the conversations which were listened to by the agents. No tapes or sound recordings were made.

3. The Government has produced all of the logs which were made pursuant to the above-described monitoring procedure.

4. The Government provided and made available all of the individuals who participated in the monitoring of the above-described device or had anything to do with the listening process during the pertinent period. On the basis of the testimony of these individuals, the Court finds that all the information obtained by means of the monitoring device between January 31 and March 19, 1962, is reflected in the logs presented to the Court. No records were made in connection with the spot check monitoring which occurred prior to January 31, 1962.

5. Defendant Ronald Carabbia did not participate in any of the conversations which were overheard or listened to by the FBI.

6. The only information which was obtained by the Internal Revenue Service as a result of the FBI's monitoring of the premises of the defendant is set out in Court's Exhibits 4, 4a and 4b. The Internal Revenue special agent who investigated the charges which led to this prosecution received no investigative leads to this prosecution from the electronic device installed at the Modern News Center, 620 Youngstown-Poland Road, Struthers, Ohio, and he did not discuss this case or information obtained from the monitoring with any agent of the FBI.

7. The information contained in the logs is totally irrelevant to any of the issues raised during the trial.

8. None of the conversations overheard during the spot check monitoring which occurred prior to January 31, 1962, were relevant to any of the issues raised during the trial.

9. Nothing overheard or disseminated from the listening device did or could have led, either directly or in-

directly, to any evidence introduced in the course of the prosecution of this case.

10. The Government disclosed the electronic surveillance of the defendant's premises in accordance with the policy set forth in the Government's supplemental memorandum to the Supreme Court in *Schipani v. United States* (No. 504 October Term 1966). Implicit in the Government's disclosure of such surveillance is a representation on the part of the Government that there was no other electronic surveillance of the defendant. At the hearing, the Internal Revenue special agent who had charge of the investigation which led to this prosecution testified that there was no other electronic surveillance of Mr. Carabbia. The Court finds that the only electronic surveillance of the defendant was that discussed in findings of fact Nos. 1 through 9.[3]

CONCLUSIONS OF LAW.

The Court concludes, upon an inquiry into all aspects of the Government's use of electronic equipment in the premises of the defendant that:

1. Since none of the information overheard by the monitoring of the microphone at the Modern News Center, Struthers, Ohio was used as evidence or as leads to evidence admitted at the trial, there would be no basis for suppressing any of the evidence which was used in the prosecution of this case.

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[3] Counsel for Mr. Carabbia attempted during the course of the hearing to undertake a widescale, independent investigation of various governmental agencies in an effort to uncover further electronic surveillance. Taking into consideration the language of the Sixth Circuit Court of Appeals' order and the circumstances set out in this finding of fact, the Court deemed that such efforts on the part of defense counsel constituted nothing more than an unwarranted stab in the dark and, therefore, did not allow counsel to pursue the same.

2. The Court concludes, therefore, that there is no basis for ordering a new trial in this case and that the judgment of conviction should stand.

/s/ FRANK J. BATTISTI,
United States District Judge.

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ENTERED JULY 31, 1967.

APPEAL from the United States District Court for the Northern District of Ohio.

THIS CAUSE came on to be heard on the record from the United States District Court for the Northern District of Ohio and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

No costs awarded. Rule 23(4).

Entered by order of the Court.
CARL W. REUSS,
Clerk.

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ON REHEARING, FILED SEPTEMBER 6, 1967.

Before: PHILLIPS and PECK, *Circuit Judges,* and CECIL, *Senior Circuit Judge.*

This cause is before the Court on petition of the defendant-appellant for rehearing. The claim that the indictment fails to state an offense is without merit. The essence of the indictment is

"That on * * * the 30th day of June, 1962, * * * Ronald Carrabia * * * subscribed * * * Form 11-C Special Tax Return and *Application for Registry-Wagering, for the period July 1, 1962 to June 30, 1963* which (Form 11-C) was verified by written declaration * * * (which declaration) he did not believe to be true and correct as to every material matter in that the said *Form 11-C* * * * *stated* that * * * Ronald Carrabia (then on June 30th) had two employees and/or agents receiving wagers in his behalf, whereas, * * * he (then on June 30th) had a greater number of employees and/or agents receiving wagers in his behalf." (Emphasis added.)

Kolaski v. United States, 362 F.2d 847, C.A. 5, cited by counsel is not in point. In that case the indictment states

"(W)hich said special tax return he did not believe to be true and correct as to every material matter in that the said special tax and application for registry and wagering return stated *that the defendant had no employees and/or agents engaging in receiving wagers on his behalf for the period October 26, 1964, to June 30, 1965, * * **" (Emphasis added.)

The appellant's declaration was made on the 30th of June 1962 and, as is charged in the indictment, he declared that at that time he had only two employees or agents receiving wagers, whereas at that time he had more than two. In the *Kolaski* case it is clear that the declaration in the application relates to the future, that is, from October 26, 1964, to June 30, 1965.

In response to the order of this Court remanding the case to the District Court for the purpose of conducting a full and fair hearing with reference to electronic surveillance the district judge filed his Findings of Fact and Conclusions of Law on May 29, 1967. The opinion of the Court deciding the appeal on its merits was under date of July

31st. Now, for the first time, on petition for rehearing counsel for the defendant claim that the district judge did not conduct a full and fair hearing. They claim that the judge denied them process for the production of records and that he failed to make certain documents available in advance of the hearing.

In our opinion we said:

> "We have examined a transcript of the testimony at the hearing before the district judge and confirm his findings of fact and conclusions of law."

In a note to the Findings of Fact, the district judge said:

> "Counsel for Mr. Carrabia attempted during the course of the hearing to undertake a widescale, independent investigation of various governmental agencies in an effort to uncover further electronic surveillance. Taking into consideration the language of the Sixth Circuit Court of Appeals' order and the circumstances set out in this finding of fact, the Court deemed that such efforts on the part of defense counsel constituted nothing more than an unwarranted stab in the dark and, therefore, did not allow counsel to pursue the same."

In further consideration of the record on remand, we conclude that this ruling of the district judge was fully justified.

We find the further claims made by counsel on the petition for rehearing to be without merit.

It is therefore ordered that the petition for rehearing be and the same is hereby denied.

Entered by order of the Court.

CARL W. REUSS,
Clerk.

MOTION OF APPELLANT FILED IN COURT OF APPEALS TO ORDER CLERK OF DISTRICT COURT TO CERTIFY ENTIRE RECORD, WITH ATTACHED EXHIBITS A and B.

Now comes the defendant-appellant and respectfully moves this Honorable Court to order the Clerk, United States District Court, Northern District of Ohio, to transmit to the Clerk of this Court, in accordance with Rule 15 of this Court's rules, "all the original papers in the file dealing with the action or proceeding in which the appeal is taken." No omissions from the said record have been agreed upon by the parties.

In support of the said motion, defendant-appellant states:

(1) The certification by the District Judge limiting the records sent to the Court of Appeals to the "findings of fact and conclusions of law and the transcript of the testimony at the hearing," absolutely prevents the Court of Appeals from knowing all of, and the extent of, the road blocks placed in front of the defendant-appellant.

(2) That the entire record must be before this Court to illustrate the manner in which the hearing and proceedings that immediately preceded it were conducted in contravention to this Court's order of February 23, 1967, that the District Court conduct "a prompt and full hearing upon all aspects of the government's use of electronic equipment in the premises of defendant-appellant * * *" and in violation of this defendant-appellant's rights under the Sixth Amendment to the Constitution of the United States.

Copies of the District Court's docket entries and defendant-appellant's proposed findings of fact are attached hereto and marked "Exhibits A and B" to illustrate the

extent of the aforesaid omissions and to avoid redundancy in setting forth defendant-appellant's contentions relative to the conduct of the hearing. *Remmer v. United States* (1956), 350 U.S. 377.

FRANK V. MORAN, JR.,
JOHN J. KANE, JR.,
Attorneys for Defendant-Appellant.

EXHIBIT A.

DISTRICT COURT'S DOCKET ENTRIES.

2/24/67. True copy order U.S.C.A. 6, of 2/23/67 remanding appeal to District Court for hearing on use of electronic equipment, findings of fact and report to be made to C.A. 6, as it retains jurisdiction of appeal filed. Copies to U. S. Atty. Moran, Kane & Judge Battisti.

3/13/67. Motion of the Defendant, Ronald Carabbia for Inspection before Trial under Rule 17 (c) of the Federal Rules of Criminal Procedure with Memorandum in support filed. Copy mailed March 13, 1967.

3/17/67. Motion of the Defendant, Ronald Carabbia for Protective Order with Memorandum in support filed. Copy mailed 3/17/67.

3/17/67. Memorandum of the Defendant in Opposition to Prosecution's Instructions to the Court filed. Copy mailed 3/17/67.

3/22/67. Motion of the Defendant requesting Immediate Hearing on Defendant's Motion filed March 13, 1967 Requesting Inspection of Documents before Hearing with Memorandum in support filed. Copy mailed 3/22/67.

3/24/67. Minutes of proceedings filed. (Hearing in chambers on motion for production-Government to produce all records immediately) Battisti, J.

3/28/67. 3 subpoenas retn. & filed. Served Charles Bates & Frank S. Turbett Jr. on 3/14/67, served Merle M. McCurdy on 3/20/67. Fees $6.00

3/21/67. Endorsed Ruling overruling Motion of the Defendant for Protective Order. Battisti, J.

3/29/67. Order overruling the motion filed March 17, 1967 for a Protective Order filed. Battisti, J. Copies served 3/29/67.

3/29/67. Order directing delivery of conversation "logs" to defense counsel, enjoining disclosure of contents and decreeing that no copies be made, logs to be returned to Government at conclusion of hearing on motion to suppress filed. Copies hand delivered—see cert. of N. Jones, attached.

3/29/67. Affidavit Attorney Wm. S. Lynch for Government re monitoring and tapes, etc., filed. Copies mailed 3/27/67.

3/30/67. Motion of the defendant for reconsideration of order of 3/29/67 filed. Copy mailed 3/30/67.

4/3/67. Motion of U.S.A. to quash subpoenas filed. Copies mailed 4/3/67.

4/5/67. Two (2) Defendant's subpoenas to produce returned and filed. Served Walter Featherstun 3/30/67; Merle M. McCurdy 3/31/67.

4/5/67. Minutes of proceedings filed. Hearing on use of electronic devices begun, but not concluded, adjourned until 10:00 a.m. tomorrow morning. Battisti J. Thompson R. (Order of 3/29/67 is vacated—motion for reconsideration is overruled as moot—motion to quash subpoena sustained)

4/5/67. Affidavit of William S. Lynch Re: electronic eavesdropping device filed.

4/5/67. Affidavit of John D. Relic Re: electronic eavesdropping device filed.

4/6/67. True copy of Order of U.S.C.A. denying motion of defendant-appellant for reconsideration of order of Feb. 23, 1967 and to reverse and remand for new trial or for dismissal; further order that District Judge conduct hearing in accordance with order of Feb. 23, 1967 and report findings to U.S.C.A. which retains jurisdiction of the appeal filed.

4/6/67. Order vacating the order of 3/29/67 and sustaining the motion to quash subpoenas as to Frank S. Turbett, Jr., filed. Battisti J. Copies delivered to Moran, Kane & Lynch by clerk.

4/6/67. Order striking the affidavits of William S. Lynch & John D. Relic filed on 4/5/67 from the file filed, Battisti J. Copies delivered to Moran, Kane & Lynch by clerk. (Affidavits delivered to Lynch by clerk.)

4/6/67. Hearing on use of electronic devices resumed, but not concluded, adjourned until 9:30 a.m. tomorrow. Battisti J. Thompson R.

4/7/67. Minutes of proceedings filed. Battisti J. Thompson R. Hearing on use of electronic devices resumed, but not concluded, adjourned until 10:00 a.m. Monday morning.

4/10/67. Defendant's subpoena to produce returned and filed. Served John E. Hoover, F.B.I., by serving James Gale, Asst. Director on 3/31/67.

4/10/67. Order sustaining motion of pltf. to quash subpoenas filed. Battisti J. Copies delivered to Lynch, Moran & Kane.

4/10/67. Minutes of proceedings filed. Hearing on use of electronic devices resumed & concluded. Taken under advisement. (counsel to prepare findings by 5/1/67) Battisti J. Thompson R.

4/10/67. Court's exhibits 1, 1a, 2, 2a, 3, 3a-1 thru 3a-14, 4, 4a, 4b, 5, 6, 6a-6e filed. Vault 330.

4/10/67. Defendants exhibit A filed. Vault 330.

4/11/67. Eighteen subpoenas of defendant retn. & filed. Served James Oar, etc., Frank S. Turbett, Jr., R. D. Cotner, Vincent Mariotte, Frank S. Turbett, Jr. (additional), John Sontich, Thomas Samara, etc., S. C. Vale, Frank Nousek, on 4/3/67; Billy Whaley could not be found; served Charles Bates, Agent DeGarmo, Agent McGregor, John Francis Conway, Frank Dowd, Stanley Peterson, James Snee and John B. Hodis 3/31/67. Fees $34.00.

5/1/67. Proposed finding of fact by deft. lodged.

5/26/67. Transcript of hearing commencing 4/5/67 filed. Battisti J. Thompson R.

5/26/67. Findings of fact & certificate of Judge Battisti mailed to U.S.C.A. 6th Circuit with Transcript Number 43 & transcript Numbered 44. Copies of findings mailed to Kane, Moran & 2 to U.S. Atty.

EXHIBIT B.

DEFENDANT'S PROPOSED FINDINGS OF FACT IN DISTRICT COURT.

On February 23, 1967, the United States Court of Appeals for this Sixth Circuit ordered "a prompt and full hearing upon all aspects of the government's use of electronic equipment in the premises of the defendant-appellant. * * *"

(1) By agreement of counsel and the Court on March 10, 1967, the hearing ordered by the Court of Appeals for the Sixth Circuit was set for April 5, 1967. The District Court at this time requested that defense counsel file any and all discovery proceedings by March 15, 1967.

(2) On March 13, 1967, counsel for defendant caused subpoenas duces tecum to be issued to Charles Bates,

Agent-in-Charge, Federal Bureau of Investigation, Cleveland, Ohio, Frank S. Turbett, Jr., District Director of Internal Revenue Service, Cleveland, Ohio, and Merle M. McCurdy, United States Attorney, Cleveland, Ohio, ordering them to bring in specific records and documents which were absolutely essential to the preparation for the full hearing ordered by the Court of Appeals. Counsel also caused a motion under Rule 17(c) to be filed with the District Court requesting that the Court order the documents enumerated in the subpoenas duces tecum to be produced on March 21, 1967.

(3) The District Court did not act upon the subpoenas duces tecum or the motion under Rule 17(c), and on March 22, 1967, counsel for defendant filed a motion in the District Court requesting an immediate hearing on defendant's motion under Rule 17(c). The Court set this latter motion for conference in chambers on March 24, 1967.

(4) At the conference on March 24, 1967, the Court advised counsel for the Government to file an affidavit and ordered that certain logs be turned over to the Court, and over the objection of counsel for the defendant, indicated that he would turn the logs over to the defendant's counsel subject to a protective order. The Court declined to rule on the motion under Rule 17(c) and subpoenas duces tecum.

(5) On March 29, 1967, Assistant United States Attorney, Nathaniel Jones, under instruction of the Court, attempted to deliver to counsel for the defendant certain logs, together with a copy of an order severely limiting and restricting the use to which counsel for the defendant could put the said logs. In view of the order, counsel for defendant had no alternative but to refuse to accept the said logs.

(6) On March 30, 1967, counsel for the defendant filed a motion with the Trial Court requesting that it consider its protective order of March 29, 1967. The Court did not consider this motion until April 5, 1967, at which time he vacated the said order. Counsel for defendant did not have access to the said logs until after the hearing commenced on April 5, 1967.

(7) In view of the Court's failure to act on defendant's Rule 17(c) motion, the counsel for defendant caused subpoenas duces tecum to be served on Charles Bates, Agent-in-Charge, Federal Bureau of Investigation, Cleveland, Ohio, Frank S. Turbett, Jr., District Director of Internal Revenue, Cleveland, Ohio, and John E. Hoover, Director of the Federal Bureau of Investigation, Washington, D. C., together with nine agents of the Federal Bureau of Investigation and eleven agents of the Internal Revenue Service who defense counsel knew were assigned to the investigations in the Youngstown, Ohio area during the period here involved. Subsequently, the prosecution filed a motion to quash said subpoenas duces tecum.

(8) No action was taken by the Court on the prosecution's motion to suppress the said subpoenas duces tecum prior to the start of the hearing. None of the witnesses subpoenaed on behalf of the defendant appeared at the hearing on April 5, 1967, and the Court refused to order that the said witnesses produce the records called for in the said subpoenas duces tecum. Instead, the Court ordered that counsel for the defendant proceed with witnesses hand-picked by the prosecution.

(9) Subsequently, on April 7, 1967, the Court sustained the prosecution's motion to suppress the said subpoenas duces tecum. No agents of the Internal Revenue Service, the Department of the United States Government

which recommended prosecution in this proceeding, appeared at the hearing ordered by the Court of Appeals.

(10) At the outset of the hearing on April 5, 1967, the Court refused to order that any records of the Federal Bureau of Investigation or the Internal Revenue Service, other than the above-mentioned logs, be made available to defense counsel,

(11) Letters in the possession of the prosecution firmly established that the defendant, Ronald Carabbia, had a proprietary interest in the premises at 620 Youngstown Poland Road, Youngstown, Ohio, at least during the year 1962.

(12) On January 22, 1962, Agent Eckblaud of the Federal Bureau of Investigation trespassed upon the premises of the defendant at 620 Youngstown Poland Road, Youngstown, Ohio, and installed therein an electronic eavesdropping device in violation of defendant's rights under the Fourth Amendment to the Constitution of the United States. The said electronic eavesdropping device was connected by way of lines of the Ohio Bell Telephone Company to a receiver in the offices of the Federal Bureau of Investigation in Youngstown, Ohio, on January 22, 1962.

(13) The said electronic eavesdropping device at 620 Youngstown Poland Road, Youngstown, Ohio, remained in operation from January 22, 1962, until at least March 22, 1962.

(14) Letters in the files of the Federal Bureau of Investigation clearly establish that the purpose of the electronic eavesdropping device was to obtain evidence against the defendant, Ronald Carabbia, relative to his alleged participation in the numbers-lottery business.

(15) Correspondence in the files of the Federal Bureau of Investigation clearly establish that there was contact between officials of the Federal Bureau of Investigation and officials of the Internal Revenue Service relative to use of the electronic eavesdropping device and the subject of conversations overheard as a result of such use.

(16) No agent or employee of the Federal Bureau of Investigation made available to defense counsel by the Court could testify from independent recollection that the log produced in the Court was the original or a true copy of the log made by them during the periods they were assigned to monitor the said electronic eavesdropping device.

(17) During the course of the hearing ordered by the Court of Appeals, the trial judge refused to permit counsel for defendant to inquire into the use of electronic eavesdropping devices by the United States Government or any agencies thereof at any premises of the defendant, other than 620 Youngstown Poland Road, Youngstown, Ohio. The Court also refused to order any representative of the United States Government to bring in records pertaining to electronic eavesdropping at any premises, other than 620 Youngstown Poland Road, Youngstown, Ohio.

(18) The Court refusing to order any records of any agency of the United States Government pertaining to electronic eavesdropping to be produced and refusing to order any agents of the Internal Revenue Service to bring their records and appear before the Court, defendant rested.

(19) The prosecution called Internal Revenue Agent Relic who contradicted his testimony given at the trial of this cause. The Court, in justification for the agent's con-

tradiction, stated that there could have been five hundred misstatements by the agent during the course of the trial of this defendant.

(20) The prosecution failed to produce any witnesses who could testify as to the scope of the use of electronic eavesdropping devices at the premises of the defendant by agents of the Internal Revenue Service or agents of the Federal Bureau of Investigation, the evidence obtained during the course of such electronic eavesdropping or the use to which such evidence was put.

(21) The limited evidence brought out at the hearing was introduced over the violent objection of the prosecution, except the contradictions of Agent Relic.

(22) During the year 1962, law enforcement officers of the United States Government installed an electronic eavesdropping device in the premises of defendant at 620 Youngstown Poland Road, Youngstown, Ohio, by trespass, in violation of his rights under the Fourth Amendment to the Constitution of the United States, and by use thereof, obtained evidence or information which led to evidence which resulted in his conviction on a charge of violating 26 U.S.C.A., Section 7206 (1).

Respectfully submitted,

FRANK V. MORAN, JR.,
JOHN J. KANE, JR.,
Attorneys for Defendant.

ORDER OF UNITED STATES DISTRICT COURT DATED MARCH 29, 1967.

On March 24, 1967, the Court, by oral order in chambers, directed the Government to submit an affidavit setting forth the extent of electronic surveillance of the defendant, Ronald Carabbia, and to furnish the original and one copy of all logs of conversation monitored by the Government in which it is possible that the defendant was a participant. The affidavit has been submitted and filed with the clerk this date and a copy thereof mailed to defense counsel on March 27, 1967. The logs have been turned over to the Court and they will be hand delivered by Nathaniel Jones, Assistant United States Attorney, to defense counsel this date.

IT IS ORDERED that no part of the logs be publicized or disclosed by defense counsel to anyone or in any manner except insofar as it may be necessary in a good faith effort to prepare for and conduct a hearing on their motion to suppress.

IT IS FURTHER ORDERED that defense counsel make no copies of said logs, or permit others to do so, and that the logs be returned to the Government intact at the conclusion of the hearing on defendant's motion to suppress.

Dated this 29th day of March, 1967.

United States District Judge.

MOTION OF DEFENDANT IN DISTRICT COURT TO RECONSIDER ORDER OF MARCH 29, 1967, FILED MARCH 30, 1967.

Now come Frank V. Moran, Jr. and John J. Kane, Jr., attorneys in the within action, and respectfully move this Honorable Court to reconsider its order of March 29, 1967, which by the following language would seal the lips of counsel and make the use of any material offered by the Government a nullity in any hearing, at any time or for any purpose:

> "IT IS ORDERED that no part of the logs be publicized or disclosed by defense counsel to anyone or in any manner except insofar as it may be necessary in a good faith effort to prepare for and conduct a hearing on their motion to suppress.
>
> "IT IS FURTHER ORDERED that defense counsel make no copies of said logs, or permit others to do so, and that the logs be returned to the Government intact at the conclusion of the hearing on defendant's motion to suppress."

FRANK V. MORAN, JR.,
JOHN J. KANE, JR.,
Attorneys for Defendant.

ORDER OF DISTRICT COURT VACATING ORDER OF MARCH 29, 1967 AND SUSTAINING MOTION TO QUASH SUBPOENAS AS TO DIRECTOR OF INTERNAL REVENUE, FILED APRIL 6, 1967.

Upon consideration of proceedings during the hearing beginning April 5, 1967,

IT IS ORDERED that the order of March 29, 1967 is vacated and the motion to quash subpoenas is sustained as to Frank S. Turbett, Jr., District Director of Internal Revenue Service, Cleveland, Ohio.

FRANK J. BATTISTI,
U. S. D. C. Judge.

ORDER OF DISTRICT COURT SUSTAINING MOTION TO QUASH SUBPOENAS, FILED APRIL 10, 1967.

Upon consideration of the proceedings during the hearing beginning April 5, 1967,

IT IS ORDERED that the motion of the Plaintiff to quash subpoenas is hereby sustained.

FRANK J. BATTISTI,
U. S. D. C. Judge.

DEFENDANT'S MOTION IN DISTRICT COURT FOR INSPECTION BEFORE TRIAL UNDER RULE 17(c) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE, WITH ATTACHED MEMORANDUM AND SUBPOENAS DUCES TECUM, FILED MARCH 13, 1967.

Now comes the defendant, Ronald Carabbia, by his attorneys, Frank V. Moran, Jr., and John J. Kane, Jr., and moves the Court for an order directing that items designated in the attached copies of subpoenas duces tecum be produced at a sufficient time prior to the hearing of this cause and at a place to be designated by the Court, for inspection by defendant and his counsel and for the purpose of preparing for the hearing ordered by the United States Court of Appeals for the Sixth Circuit.

FRANK V. MORAN, JR.,
JOHN J. KANE, JR.,
Attorneys for Defendant.

MEMORANDUM.

Rule 17(c), Federal Rules of Criminal Procedure:

"*For Production of Documentary Evidence and of Objects.* A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. *The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.*" (Emphasis added.)

In the instant case, the attorneys for the Department of Justice admitted in papers filed with the United States Court of Appeals for the Sixth Circuit that they violated constitutional rights of this defendant, Ronald Carabbia, by placing the microphone (commonly known as a "bug") at a place or places operated or occupied by this defendant, Ronald Carabbia, and that conversations emanating from this microphone were overheard and recorded by Government agencies or employees of Government agencies.

While the order of the United States Court of Appeals refers to a microphone in a place of business of this defendant, the Court did not limit this hearing to conversations heard only on that microphone, but ordered that this Court "conduct a full and prompt hearing *upon all aspects* of the government's use of electronic equipment * * *" (emphasis added), including wire tapping. If the mandate of the Court of Appeals is to be complied with, it is necessary that each and every requested item in the attached three (3) subpoenas duces tecum be made available to this

defendant and his counsel long enough before the date of hearing so that counsel may properly prepare for the hearing and can subpoena the proper records, persons and companies. Only then can defendant be given assurance that the hearing into the Government's violation of his constitutional rights will be full and complete.

The documents set out in the attached three (3) subpoenas duces tecum are in the hands of, or under the control of the individuals named in said subpoenas duces tecum and are not available to this defendant through any other means.

Respectfully submitted,

FRANK V. MORAN, JR.,
JOHN J. KANE, JR.,
Attorneys for Defendant.

SUBPOENA TO PRODUCE DOCUMENT OR OBJECT.

To Charles Bates
Agent-in-Charge, Federal Bureau of Investigation
Standard Building
Cleveland, Ohio 44113

You are hereby commanded to appear in the United States District Court for the Northern District of Ohio, Eastern Division, at Federal Building in the city of Cleveland, Ohio, on the 21st day of March, 1967 at ten o'clock A.M. to testify in the case of United States v. Ronald Carabbia and bring with you all memoranda, requests, papers, documents and/or orders for assignment of any and all attorneys, agents, employees and/or representatives of the Federal Bureau of Investigation in or to the Youngstown area of Ohio, during the period June 1, 1961, to date, to participate in the purported organized crime investigation ordered by the former Attorney General of the United States, Robert Kennedy, and involving the defendant-appellant, Ronald Carabbia, among others, together with the names and addresses of such attorneys, agents, employees and/or representatives, the specific dates when each of said attorneys, agents, employees and/or representatives overheard conversations of defendant-appellant, Ronald Carabbia, and/or others, through the use of electronic surveillance equipment, including, but not limited to, wire tapping equipment placed on or about the residence and/or places of business of said defendant-appellant, and any and all notes, memoranda and/or papers made by each of said attorneys, agents, employees and/or representatives.

C. B. WATKINS, *Clerk,*
By RICHARD R. PETERS,
Deputy Clerk.

SUBPOENA TO PRODUCE DOCUMENT OR OBJECT.

To Merle M. McCurdy
United States Attorney
Federal Building
Cleveland, Ohio 44114

You are hereby commanded to appear in the United States District Court for the Northern District of Ohio, Eastern Division, at Federal Building in the city of Cleveland, Ohio, on the 21st day of March, 1967 at ten o'clock A.M. to testify in the case of United States v. Ronald Carabbia and bring with you all original tapes, transcripts, notes, logs, summaries, reports, memoranda and/or papers containing conversations or parts of conversations of defendant-appellant, Ronald Carabbia, and/or any other persons identifiable or not, obtained by the use of electronic surveillance equipment, including, but not limited to, wire tapping equipment placed on or about the residence and/or places of business of said defendant-appellant, Ronald Carabbia, during the period June 1, 1961, to date, together with the names of any and all attorneys, employees and/or agents of the Department of Justice, Federal Bureau of Investigation, Internal Revenue Service and/or any other Government agencies to which such tapes, transcripts, notes, logs, etc. were available, and any and all notes, logs and/or memoranda made by each of said attorneys, employees and/or agents.

C. B. WATKINS, *Clerk*,
By RICHARD R. PETERS,
Deputy Clerk.

SUBPOENA TO PRODUCE DOCUMENT OR OBJECT.

To Frank S. Turbett, Jr.
District Director of Internal Revenue Service,
Cleveland, Ohio
1240 East Ninth Street
Cleveland, Ohio 44199

You are hereby commanded to appear in the United States District Court for the Northern District of Ohio, Eastern Division, at Federal Building in the city of Cleveland, Ohio, on the 21st day of March, 1967 at ten o'clock A.M. to testify in the case of United States v. Ronald Carabbia and bring with you all memoranda, requests, papers, documents and/or orders for assignment of any and all attorneys, agents, employees and/or representatives of the Internal Revenue Service in or to the Youngstown area of Ohio, during the period June 1, 1961, to date, to participate in the purported organized crime investigation ordered by the former Attorney General of the United States, Robert Kennedy, and involving the defendant-appellant Ronald Carabbia, among others, together with the names and addresses of such attorneys, agents, employees and/or representatives, the specific dates when each of said attorneys, agents, employees and/or representatives overheard conversations of defendant-appellant, Ronald Carabbia, and/or others, through the use of electronic surveillance equipment, including, but not limited to, wire tapping equipment placed on or about the residence and/or places of business of said defendant-appellant, and any and all notes, memoranda and/or papers made by each of said attorneys, agents, employees and/or representatives.

C. B. WATKINS, *Clerk*,
By RICHARD R. PETERS,
Deputy Clerk.